

### **REMARKS**

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-11 are currently being prosecuted. Claim 1 has been amended and claims 2-10 have been withdrawn. New claim 11 has been added in a varying scope, which is supported by at least page 6, lines 1-3 of the present specification. No new matter has been added.

The Examiner is respectfully requested to reconsider his rejections in view of the amendments and remarks as set forth below.

#### **I. Priority Under 35 U.S.C. §119**

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

#### **II. Information Disclosure Citation**

Applicants thank the Examiner for considering the references supplied with the Information Disclosure Statement filed February 8, 2005, June 8, 2006 and September 14, 2007 and for providing Applicants with initialed copies of the PTO/SB/08 forms filed therewith.

#### **III. Claim Rejection under 35 USC § 112, first paragraph**

Claim 1 is rejected under 35 USC § 112, first paragraph. This rejection is respectfully traversed.

To address this rejection, Applicants provide an indication in the present specification of the public availability as explained above, which availability is evidenced by the attached copy of receipt of *Streptococcus sp. KL0188* deposit in the Korean Collection for Type Culture, which is an International Depository Authority (IDA), under Budapest Treaty. Attached herewith is a statement that all restrictions imposed by the depositor on the availability to the public of *Streptococcus sp. KL0188* will be irrevocably removed upon the issuance of a patent. See MPEP § 2404.01.

By way of this present submission, this rejection is overcome. Therefore, the Examiner is respectfully requested to withdraw the 35 USC § 112, first paragraph rejection.

#### **IV. Claim Rejections under 35 USC §§ 101 and 35 112, second paragraph**

Claim 1 stands rejected under 35 USC § 101 due to non-statutory subject matter and 35 USC 112, second paragraph due to indefiniteness.

Based on the Examiner's suggestion, claim 1 has been amended to recite "A biologically pure microorganism of *Streptococcus sp. KL0188*" in place of *Streptococcus sp. KL0188*. By way of this present submission, this rejection renders moot. Thus, the Examiner is respectfully requested to reconsider and withdraw the 35 USC §§ 101 and 112, second paragraph rejections.

#### **V. Request for Rejoinder of Withdrawn Claims 2-5**

Applicants have shown above that pending elected claim 1 and 11 are allowable. Since withdrawn dependent claims 2-5 require all limitations of allowable product claim 1, rejoinder is

proper and therefore respectfully solicited. Reference is made to rejoinder rules as explained in MPEP § 821.04.

### Conclusion

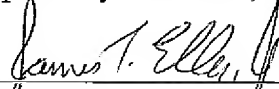
In view of the above remarks, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact James T. Eller, Jr. Reg. No. 39,538 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

Dated: September 2, 2008

Respectfully submitted,

By 

James T. Eller, Jr.

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Attachments: 1. Statement

2. A copy of receipt of *Streptococcus* sp. KL0188 deposit

## STATEMENT

The undersigned Attorney, James T. Eller, Jr., Registration No. 39,538, hereby declares the following:

All restrictions imposed by the depositor on the availability to the public of *Streptococcus sp. KL0188* will be irrevocably removed upon the issuance of a patent.

9/2/08

Date

James T. Eller, Jr.

Signature